limited class would use the view; under that of public benefit, the advantage would be negligible.

Esthetic considerations, on the other hand, may be incidental to some other public user. A Massachusetts statute, limiting the height of buildings around a public park, was passed to secure beauty as well as an easement of light and air.[17] Land has been condemned for roads leading nowhere but to beautiful views.[18] But the public as a whole actually used the easement of light and air or the public drive, whether they were conscious of the esthetic advantages or not.[19]

A further distinction should be noticed as to motive. Gettysburg Park was built for the avowed purpose of fostering a spirit of national patriotism.[20] But here again an actual public user of the land taken was assured. The education of the public esthetic sensibilities, however desirable, is no justification until the further element of public user is present.

CONSTITUTIONALITY OF EUGENIC MARRIAGE LAWS.— The increasing interest in eugenics justifies a prediction that within a few years several states, following Wisconsin, will prohibit the issuing of a marriage license to any male applicant who does not produce a physician's certificate stating that he is free from venereal diseases.[1] Will such statutes be a violation of the Fourteenth Amendment?[2]

To be justified as an exercise of the police power, legislation which restrains liberty or deprives of property must secure a recognized social interest. Further, the means employed must be such as will reasonably bring about the desired result. Finally, the resulting disadvantages must not, either because the means employed are unreasonable and burdensome, or for any other reason, overbalance the social benefit gained. Clearly a eugenic marriage law subserves a vital social interest by protecting the health of the wife and of future generations.[3] It has been demonstrated that proper medical tests will determine with considerable certainty the existence of sexual diseases in those examined. Adequate medical supervision, coupled with denial of marriage to the sexually unfit, will therefore effectively protect the woman who marries in the state and the children of that marriage. It may be argued

---

[17] Att'y-Gen. *v.* Williams, 174 Mass. 476, 55 N. E. 77.

[18] Higginson *v.* Nahant, 11 Allen (Mass.) 530; petition of Mt. Washington Road Co., 35 N. H. 134.

[19] A more difficult case would arise where the sole object was to beautify the view from a public park. Since the public use the park for health and recreation, perhaps the fact that, consciously or unconsciously, they would derive a greater benefit from its use where the outlook was fine might distinguish the case from one where the restrictions are imposed upon any other part of the city. See *dictum* in Att'y-Gen. *v.* Williams, *supra*; Parker *v.* Commonwealth, 178 Mass. 199, 55 N. E. 634.

[20] United States *v.* Gettysburg Electric Ry. Co., 160 U. S. 668.

[1] See a sign of the times in the message of the Governor of Indiana to the legislature in 1905, quoted in 10 J. COMP. LEG. 120, 121. Parliament will doubtless be much more conservative than will many American state legislatures. *Cf.* remarks of Lord Roseberry, in 1908, quoted in the same article.

[2] Or similar provisions in state constitutions.

[3] See FREUND, POLICE POWER, § 124; TIEDEMAN, POLICE POWER, § 149.

that this benefit will be offset by an increase in intercourse between couples who would otherwise marry, resulting in diseased unmarried women and diseased bastards; and that the law prefers diseased legitimate to diseased illegitimate children, and diseased wives to diseased mistresses. This consideration may well give pause to legislators. But that the restriction will afford protection to women contemplating marriage, and will effect a great reduction in the number of diseased children born into the world, is assuredly a reasonable view. It is therefore submitted that, if the state provides for adequate medical examination at its own expense, eugenic marriage laws, though they do restrain liberty, will be as unimpeachable as are statutes forbidding infant, miscegenetic, and consanguineous marriages, and those of epileptics and defectives.[4] Without exception, these statutes have been upheld when attacked as unreasonable exercises of the police power.[5]

The question remains whether, if the state does not bear the cost of the examination, the means employed will be unreasonable and oppressive, or so burdensome that they outweigh the benefit to society. The cost of a laboratory test, the only effective means of discovering the presence of sexual diseases, is rather large. Such an expenditure will admittedly be a hardship on the average young man desiring to marry. But the expenditure will be more than a mere hardship; it will necessarily be a hindrance to marriage, even among the healthy, which is obviously a detriment to society. Whether it outweighs the social benefit gained is a close question. Another important consideration is that requiring the applicant to pay for the examination makes a certain discrimination among the competent. Rich men may marry; poor men, in some cases, cannot. Statutes causing a similar discrimination, by requiring men desiring to engage in certain businesses to pay for an examination into their qualifications, have been upheld.[6] Here, however, the deprivation is only of one field of labor among many; while to deprive a healthy man of the right to marry merely because he is poorer than his fellows is to deprive him wholly of the legal means of exercising an all-important function of mankind. It must be admitted, therefore, that the combination of these considerations makes doubtful the validity of a eugenic marriage law which does not provide for examinations at the state's expense.

The Wisconsin law [7] calls for a laboratory examination, and provides that the physician's examination fee shall not exceed three dollars. Since, as the court found, the test cannot be made for that sum, the statute seems invalid on the ground that the means provided will not effect the desired result; since the requirement of the laboratory test and the prohibition as to the physician's fees are inconsistent, to enforce the statute would render marriage impossible. The decision of the circuit court of Milwaukee County, holding the law unconstitutional,

[4] All states have statutes prohibiting one or more of these classes of marriage. For typical examples, see ILLINOIS STATS. ANN., 1913, §§ 7345–7; BURNS ANN. STATS. (Ind.), 1908, §§ 8357, 8360, 8365; MICHIGAN STATS. ANN., 2 ed., 1913, §§ 11423, 11425, 11426, 11428.

[5] Gould *v.* Gould, 78 Conn. 242, 61 Atl. 604; Lonas *v.* State, 3 Heisk. (Tenn.) 287.

[6] State *v.* Forcier, 65 N. H. 42; State *v.* Heinemann, 80 Wis. 253, 49 N. W. 818.

[7] WISCONSIN SESSION LAWS, 1913, pp. 1060–1062.

therefore seems correct. *Peterson* v. *Widule* (Dist. Ct. of Milwaukee County, Wis.). Not officially reported.[8]

It would seem that those state legislatures which are desirous of obtaining the social benefits offered by such laws would do well, in framing them, to insure their constitutionality by providing that the cost of the examinations be borne by the state.

WHAT LAW GOVERNS LIABILITY OF SHAREHOLDERS FOR CORPORATE DEBTS. — On exactly what basis the individual liability of shareholders to corporation creditors should be placed is not clear. It is true the liability seems consensual, for a shareholder taking stock assents to be bound by the terms of the corporation charter and the law of the creating state. But there can be no strict contract, for the shareholder's obligation runs to no specified promisee.[1] Moreover, by a transfer of his shares, the stockholder can effect a complete novation, freeing himself from all liability, and yet this substitution requires no consent from creditor, state, or other shareholders. Hence some courts deny that the obligation is a contractual one, and declare it merely a statutory liability incidental to the ownership of shares.[2] Likewise it has been suggested that, though contractual, this liability is in the nature of a covenant running with the land and binds each successive shareholder.[3] Whether or not the real nature of the relationship can be logically explained on the authorities, it is generally treated as a contract between shareholder and creditor, subject to automatic novation, governed in terms by the corporation charter and the law of the creating state[4] and enforceable

---

[8] A copy of the decision was furnished to the Review. The proceeding was a petition to compel the county clerk to issue a license to the petitioner even though he had no physician's certificate. It is understood that an appeal from the decision will be heard at an early date by the state supreme court.

The court held the law unconstitutional as violating the sections of the Wisconsin Constitution recognizing the inherent right of all to life and liberty, and forbidding control of or interference with rights of conscience. Art. I, secs. 1 and 18. The latter ground seems clearly unsound. People who conscientiously believe that the state has no concern with marriage are nevertheless amenable to the state marriage law. State *v.* Walker, 36 Kan. 297, 13 Pac. 279. On the former ground, the court's idea seems to be that the fit have an inalienable right to marry; that the state must not impair that right; and that the state does impair it if "it puts the applicant in the position of asking for and receiving, and the physician in the position of giving, services without a reasonable compensation." The defect here is that the physician cannot be compelled to serve at all — Hurley *v.* Eddingfield, 156 Ind. 416, 59 N. E. 1058 — much less to serve without reasonable compensation. Perhaps the court merely means to put the case on the ground that requiring the payment of the fee is the unconstitutional feature of the act.

[1] For a much fuller discussion of the principles here involved, see 23 HARV. L. REV. 37 *et seq.*

[2] Crippen *v.* Laighton, 69 N. H. 540, 44 Atl. 538; Hancock National Bank *v.* Farnum, 20 R. I. 466, 40 Atl. 341.

[3] This analogy, however, suggested in 23 HARV. L. REV. 38, is not wholly satisfying, for the assignor of shares is completely freed from all liability on assignment, while an assignor of a covenant running with the land may remain liable as well as his assignee.

[4] Flash *v.* Conn., 109 U. S. 371; Whitman *v.* Oxford National Bank, 176 U. S. 559; Aldrich *v.* Anchor Coal & Development Co., 24 Ore. 32, 32 Pac. 756; First National Bank *v.* Gustin, etc. Co., 42 Minn. 327, 44 N. W. 198; 1 WHARTON, CONFLICT OF LAWS,